



DEP FACT SHEET

Amendments to Chapter 305, Permit by Rule (effective 12/5/2006)

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Introduction

Maine DEP recently completed a rulemaking to adopt two new permit by rule (PBR) sections: one is for activities in, on or over significant vernal pool habitat and the other is for activities in existing developed areas that are located in, on, or over high or moderate value inland waterfowl and wading bird habitat, or shorebird nesting, feeding, or staging areas.

PBR is a simple, accelerated review process that may be used for some of the activities that require permits under the Natural Resources Protection Act. A PBR activity will not significantly affect the environment if carried out in accordance with the requirements of Chapter 305, and generally has less of an impact on the environment than an activity requiring an individual permit. If a proposed activity is not described in Chapter 305, or will not be conducted in accordance with the standards of Chapter 305, the applicant must obtain an individual permit prior to beginning the activity.

Chapter 305, Permit by Rule, was first adopted in 1989, and has been amended several times. General requirements are described in Section 1 of the chapter, and the remaining sections each apply to a particular type of activity for which PBR is available.

What is the new PBR section allowing certain activities in existing *developed areas* located in, on, or over high or moderate value inland waterfowl and wading bird habitat, or shorebird nesting, feeding, or staging areas?

The Maine DEP initiated adoption of this new PBR section (Section 20) to allow regulated activities to occur in certain significant bird habitats if located in existing developed areas. "Existing developed area" means the area of property currently altered, which includes, but is not limited to, areas containing buildings, driveways, parking areas, wastewater disposal systems, lawns and other non-native vegetation.

Applicants can build new structures, add driveways and further develop "existing developed area" under this section of PBR. Activities eligible for PBR must also conform with all municipal shoreland zoning requirements. Because these habitats are most intensively used by a wide range of bird species during the summer, any approved activity that takes place between July 15 and September 15 must occur during a time period approved by the Department of Inland Fisheries and Wildlife.

What is the new PBR section allowing activities in, on or over significant vernal pool habitat?

In recent legislation, the Maine Legislature required that the Maine DEP adopt an additional PBR section (Section 19) to allow activities that need permits beginning *September 1, 2007*, because they are located in, on, or over a significant vernal pool habitat.

Applicants are allowed to perform activities within a significant vernal pool habitat under this section of PBR, such as constructing a home, lawn and driveway, provided:

- (1) No disturbance occurs within the vernal pool depression itself;
- (2) A minimum of 75% of the critical terrestrial habitat is maintained as unfragmented forest with at least a partly-closed canopy of overstory trees to provide shade, deep litter and woody debris;
- (3) Forest corridors connecting wetlands and significant vernal pools are maintained or restored;
- (4) Forest floor disturbance is minimized; and.
- (5) Native understory vegetation is maintained and downed woody debris is left in place.

These standards apply to only that area within 250 feet of the high water mark of the significant vernal pool depression.

What other changes were made to Ch. 305, Permit by Rule?

Additional changes made to Chapter 305 included:

- Updates to Section 16, Activities in Coastal Sand Dunes, in order to be consistent with recent amendments to Chapter 355, Sand Dunes Systems.
- Updates to Section 11, State Transportation Facilities, to increase reliance on Maine Department of Transportation's best management practices (BMTs) and reflect more current approaches.
- Minor updating, such as allowing the DEP to approve more outfall pipes under PBR, adjusting the requirements for checking with other agencies before starting certain projects, updating references to BMP manuals, and updating the standard concerning use of lumber treated with chromated copper arsenate (CCA) to reflect recent changes in state and federal law, and more.

Additional information

For forms, rule standards and other materials associated with Permit by Rule, see the Natural Resources Protection Act (NRPA) web page at: <http://www.maine.gov/dep/blwq/docstand/nrpapage.htm>

For maps and other information on significant wildlife habitat - bird habitats, see <http://www.maine.gov/dep/blwq/docstand/nrpa/birdhabitat/index.htm>

For information about significant vernal pool habitats, see: <http://www.maine.gov/dep/blwq/docstand/nrpa/vernalpools/index.htm>